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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,743	02/22/2002	Elias Humberto Hermida Ochoa		4696

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ALCON RESEARCH, LTD.  
R&D COUNSEL, Q-148  
6201 SOUTH FREEWAY  
FORT WORTH, TX 76134-2099

EXAMINER

KRISHNAN, GANAPATHY

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 11/04/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/082,743

**Applicant(s)**HERMIDA OCHOA, ELIAS  
HUMBERTO**Examiner**

Ganapathy Krishnan

**Art Unit**

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.                      6) ☐ Other: .

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### **DETAILED ACTION**

The Amendment A (paper 15) filed August 25, 2003 has been received, entered into the record and carefully considered. The following information provided in the amendment affects the instant application:

1. Amendment to the specification.
2. Amendments to claims 1-5.
3. Remarks drawn to rejections under U.S.C.112 first, second paragraph.

Claims 1-5 are pending.

#### ***Claim Rejections - 35 USC § 112***

The rejections of claims 1-5 under 35 USC 112, second paragraph have been overcome by amendments.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindblad (US 4801619) in combination with Nocelli et al (EP 704216).

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5 are drawn to a method for treatment of mammalian joint exhibiting articular cartilage degeneration caused by osteoarthritis comprising implantation of a composition comprising 40mg of chondroitin sulfate and 30mg of sodium hyaluronate per cubic centimeter of aqueous vehicle; wherein the joint is a human joint selected from knees, shoulders, coxofemoral, ankles and elbows, intraphalangeal and wrists.

Lindblad drawn to treatment of inflammations of skeletal joints, teaches the intra-articular administration of hyaluronic acid or its salt as an aqueous solution. The amount administered is preferably in the range of 5 to 80mg (see col. 3, lines 35-53).

Nocelli et al drawn to compositions containing chondroitin sulfate, teach the use of the same for inflammatory processes of the cartilaginous tissues, osteoarthritis, and articular inflammations in general. The compositions preferably contain 6 to 20mg/kg/day (see page 4, lines 10-16). The compositions also contain water as the vehicle (see examples 1 and 2, page 4-5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a composition comprising sodium hyaluronate and chondroitin sulfate in a method for treating mammalian joint exhibiting articular cartilage degeneration with a

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reasonable amount of success since the use of the compounds for the same purpose is seen to be disclosed for the treatment of articular cartilage degeneration and inflammatory processes of cartilaginous tissue individually in the prior art. The idea of combining them flows logically from their having been individually taught in prior art for the treatment of mammalian joint exhibiting articular cartilage degeneration.

One of ordinary skill in the art would be motivated to do so for the purpose of optimization of the amounts required for the method of treatment as instantly claimed.

### **Conclusion**

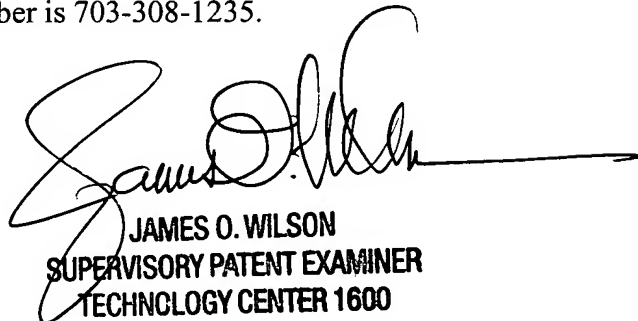
1. Claims 1-5 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ganapathy Krishnan whose telephone number is 703-305-4837. The examiner can normally be reached on 8.30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 703-308-4624. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

GK



JAMES O. WILSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600